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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:)
Aleksandar P. Radulovic,) Case No. 04-24771
Debtor.)

TRANSCRIPT OF DIGITAL PROCEEDINGS
BEFORE THE HONORABLE SAMUEL J. STEINER
MARCH 18, 2005

RULING ONLY

Transcribed from digital recording by: Shari L. Ahearn, CCR

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APPEARANCES

For the Debtor: MR. JEROME SHULKIN
Attorney at Law
2101 Fourth Avenue, Suite 200
Seattle, WA 98121
(206) 623-3515

For the Chapter 7
Trustee: MR. JAMES F. RIGBY
Attorney at Law
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(206) 441-0826

1 SEATTLE, WASHINGTON; MARCH 18, 2005

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3 RULING ONLY

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5 TRANSCRIPT OF DIGITAL RECORDING

6 --oo0oo--

7 THE COURT: Well, we spent quite a bit of time
8 on this, and I do have some rather lengthy notes.

9 To start with, as I understand these facts, the
10 debtor filed this Chapter 7 case on November 17,
11 2004. He scheduled, under "Other Personal
12 Property," the sum of \$11,756.16 and described the
13 money as trust funds for, first, an exemption of
14 \$3,615; and, second, for the employment of Shulkin
15 Hutton for postfiling defense and/or for the trustee
16 as the Court may direct.

17 On Schedule C the debtor did in fact exempt the
18 \$3,615. The balance of the funds was listed as his
19 interest in the funds as an executory contract with
20 Shulkin Hutton. On the form required for the
21 disclosure of compensation, there is this statement:
22 "By agreement with the debtor, the above disclosed
23 fee does not include the following services."

24 Out of the trust funds deposited with Shulkin
25 Hutton, there is a reserve for defense, if

1 necessary, on behalf of the debtor relating to
2 discharge or disputes. And as I understand it,
3 postfiling, there is a discharge or dischargeability
4 suit that has been brought against this debtor.

5 In the present motion the trustee is seeking a
6 turnover of the \$8,150.16. That is the non-exempt
7 portion of the funds presently held in his
8 attorney's trust account. I'm not going to get into
9 the positions taken by the parties.

10 From the briefing, it appears that there are
11 two precedents which bear on the problem. First,
12 there is my unreported opinion in the 1995 case of
13 Coleman Associates Limited Partnership and the
14 reported ruling of Judge Overstreet in the 2003 case
15 of Advanced Imaging Technologies, Inc., which is
16 cited as 306 BR 677.

17 In Advanced Imaging Judge Overstreet held that
18 the debtor's attorneys had a prepetition security
19 interest in the retainer funds which had been
20 perfected under state law. In the Coleman
21 Associates case, I concluded that under state law,
22 the attorney's possessory lien in the client's funds
23 is limited by Washington Rule of Professional
24 Conduct 1.14(b)(4), which requires an attorney to
25 deliver any funds in his or her possession which the

1 client is entitled to receive to the client on the
2 client's demand.

3 Based on that, I concluded that the extent of
4 the attorney's lien was therefore measured by the
5 amount of compensation owed by the client at any
6 given time. I also concluded that the attorneys
7 held no prepetition lien because the debtor owed no
8 fees on the petition date.

9 At this time, I conclude that my analysis in
10 the Coleman case was correct; that it applies here;
11 and that it disposes of the argument that there was
12 a perfected prepetition security interest in the
13 funds for services to be rendered in the future.

14 Now, in his brief, the trustee points out
15 another interesting -- what I think is a controlling
16 factor; namely, that in both Coleman and Advanced
17 Imaging, those cases began as Chapter 11s in which
18 the debtors' attorneys had obtained an order
19 approving their employment.

20 In those cases, the issues involved in the
21 retainer arose in the context of applications to
22 approve and pay fees for postpetition services which
23 had actually been rendered. The difference in the
24 cases is that in Coleman, the attorneys disclosed
25 the retainer in their application for approval of

1 employment and the order approving the employment
2 was entered ex parte and did not reference the
3 retainer.

4 In Advance Imaging, the order authorizing
5 employment specifically references the retainer and
6 was obtained after notice to creditors.

7 I think this case is different. This one
8 started out as a Chapter 7, not as an 11, and has
9 remained a 7. There is no order in this case
10 authorizing the employment of counsel for the debtor
11 which deals with a retainer; nor was the retainer
12 agreement approved by the Court.

13 I don't believe there are any reported cases
14 which have dealt with retainers for fees in a case
15 filed under Chapter 7. I think it would be very
16 unusual for a Court to enter an order authorizing
17 the employment of an attorney for the debtor in a
18 Chapter 7.

19 Further, I conclude the fact that the retainer
20 was disclosed here is not the equivalent of a Court
21 order approving a security interest in property of
22 the estate after notice to creditors.

23 I conclude that under these facts, an attempt
24 to create a postfiling security interest in the
25 funds is a technical violation of the automatic

1 stay.

2 In short, for the reasons indicated, the
3 trustee's motion for a turnover will be granted.

4 I'll leave it up to you, Mr. Rigby, to prepare
5 and present an order. And I also want a transcript
6 of these oral remarks made for the record.

7 MR. RIGBY: Do I need to do any --

8 THE COURT: You have to prepare and present an
9 order.

10 MR. RIGBY: I know. But with respect to the
11 transcript, we don't have a court reporter here.
12 Before when you ordered that, it would have
13 happened. Do I need to do anything to make that
14 happen now?

15 THE COURT: The expert is shaking her head no.

16 MR. RIGBY: Okay. The boss is -- (inaudible).

17 MR. SHULKIN: Your Honor, may I address the
18 Court a moment?

19 THE COURT: Yeah.

20 MR. SHULKIN: I think there's a little
21 confusion here. It was never intended that the
22 debtor would seek an order to be retained by the
23 debtor for these services. That's something that is
24 not normally done, and it wasn't intended here.
25 This is principally a trust relationship where a

1 retainer was paid. The agreement between the
2 parties, in effect, establishes that it's held in
3 trust subject to the review by the Court.

4 So it's really not a security interest, and
5 it's certainly not a violation of 362. It presents
6 an interesting fact that probably, given the
7 circumstances, involving the size of it, it may or
8 may not require review. But it seems to me that
9 this is a rather crucial issue which has more
10 bearing than just this local situation.

11 Also, it appears to me that the funds require
12 that -- or rather the situation requires that this
13 man does not have a home that he owns. He's turned
14 over all of the stock that he had to the trustee.
15 He's facing an ex-wife who has a history of
16 prolonged litigation which he has to defend
17 against. He has a good job, but it's a very limited
18 job in the software industry.

19 So, in effect, this ruling actually deprives
20 him of a principal means of defending a very serious
21 discharge issue. And this man has particularly been
22 totally honest with the Court, totally identified
23 all of the assets. And to characterize it as a
24 security interest, I think is wrong. I think it has
25 to be looked at as a trust interest with full

1 disclosure.

2 Thank you.

3 THE COURT: Okay. You're going to do an order?

4 MR. RIGBY: I'll prepare the order and either
5 note it or circulate it, Your Honor.

6 Thank you.

7 THE COURT: Okay. You're welcome.

8

9 (THE PROCEEDINGS IN THIS MATTER WERE
10 CONCLUDED.)

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C E R T I F I C A T E

I, Shari L. Ahearn, hereby certify that:

the foregoing pages represent an accurate and
complete transcription, to the best of my ability,
from the digitally recorded proceedings before
The Honorable U.S. Bankruptcy Judge presiding in
the aforementioned matter; and

that these pages constitute the original or a
true copy of the transcript of the digitally
recorded proceedings.

Signed and dated this 19th day of April, 2005.

by: /s/ Shari L. Ahearn
Certified Court Reporter
CCR# 2396

